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8 **IN THE UNITED STATES DISTRICT COURT**  
9 **FOR THE EASTERN DISTRICT OF CALIFORNIA**  
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11 MICHAEL HOLTSINGER,

No. CIV S-03-0732-MCE-CMK-P

12 Plaintiff,

13 vs.

FINDINGS AND RECOMMENDATIONS

14 TANYA VOROS,

15 Defendant.  
16 \_\_\_\_\_/

17 Plaintiff, a state prisoner, brings this civil rights action pursuant to 42 U.S.C.  
18 § 1983. Pending before the court is Defendant's motion for summary judgment (Doc. 275).

19 Summary judgment is appropriate when it is demonstrated that there exists "no  
20 genuine issue as to any material fact and that the moving party is entitled to a judgment as a  
21 matter of law." Fed. R. Civ. P. 56(c). Defendant's motion was filed prior the entry of fact  
22 establishing sanctions for Defendant's failure to appear for her deposition (Docs. 315, 320). The  
23 facts establishing Defendant's liability have now been established. As such, summary judgment  
24 cannot be entered in Defendant's favor, and her motion should be denied.

25 Based on the foregoing, the undersigned recommends that Defendant's motion for  
26 summary judgment (Doc. 275) be denied.

1           These findings and recommendations are submitted to the United States District  
2 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 20 days  
3 after being served with these findings and recommendations, any party may file written  
4 objections with the court. The document should be captioned "Objections to Magistrate Judge's  
5 Findings and Recommendations." Failure to file objections within the specified time may waive  
6 the right to appeal. See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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8 DATED: January 20, 2010

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10 **CRAIG M. KELLISON**  
11 UNITED STATES MAGISTRATE JUDGE  
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